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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,802	10/11/2001	Shoichi Taneichi	0445-0309P	8999
2292	7590	02/08/2005		
BIRCH STEWART KOLASCH & BIRCH			EXAMINER	
PO BOX 747			WATKINS III, WILLIAM P	
FALLS CHURCH, VA 22040-0747			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/973,802	TANEICHI ET AL.	
	Examiner	Art Unit	
	William P. Watkins III	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 November 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3,5-7,10-13,15,17-24 and 27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3,5-7,10-13,15,17-24 and 27 is/are rejected.

7) Claim(s) 27 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: Translation of JP9003755.

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-3, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Wielen et al. (U.S. 4,720,415) in view of Schleinz et al. (U.S. 5,612,118) further in view of Akihiko (JP-A 09-003755, machine translation attached).

Vander Wielen et al. teaches a gathered top layer joined to an elastic layer. The gathered layer may be a carded web (col. 12, lines 15-20). Elastic fibers are taught as forming the elastic layer of Vander Wielen et al. and can be in the form of nonwoven webs (col. 4, lines 60-65). Schleinz et al. teaches that a joined layer can be gathered by elastic fibers that are heat shrunk (col. 8, lines 1-10, col. 4, lines 35-40). Akihiko teaches the use of a web of unbonded parallel fibers as the layer that is gathered, when joined to a layer that is heat

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shrunk. The parallel fibers forming a fiber filled projection that allows for the attachment of a fastener (section 0020 and 0030 of the detailed description of the machine translation, Figure 3). The instant invention claims the use of elastic fibers, which heat shrink to form a gathered web with projections that are fiber filled. It would have been obvious to one of ordinary skill in the art to use heat shrink fibers to gather the web of Vander Wielen et al. because of the teaching of Schleinz et al. that heat shrinking can be used instead of elastic expansion before bonding in order to construct a gathered web laminate. It further would have been obvious to have used an unbonded carded web of parallel fibers in order to have filled projections that would be useful for attaching fasteners because of the teachings of Akihiko. Selection of specific fiber density and degree of elastic expansion is dependent on the final application and is taken as being within the ordinary skill of the art absent unexpected results.

3. Claims 5, 6, 7 and 11-13, 15, 17-19, 20-24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Wielen et al. in view of Schleinz et al. further in view

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of Akihiko (JP-A 09-003755) as applied to claims 1-3 and 10 above, and further in view of Zelazoski et al. (U.S. 5,536,555).

Zelazoski et al. teaches putting holes in gathered webs in order to allow good fluid intake rates when the gathered composite is used as a layer in an absorbent personal care article (col. 2, lines 1-15, abstract). Zelazoski et al. also teaches the formation of a gathered top layer by thermal contraction of materials that may be elastic in a second layer and the use of latent thermal crimped fibers in the second layer (col. 6, lines 60-65, col. 7, lines 20-35, col. 8, lines 50-65, col. 9, lines 5-15). The instant invention claims a gathered web with perforations used in an absorbent article with latent crimp fibers in the elastic layer. It would have been obvious to one of ordinary skill in the art to have perforated the web of Vander Wielen et al. in view of Schleinz et al. further in view of Akihiko in order to have good fluid intake because of the teachings of Zelazoski et al. when used in an absorbent application. It further would have been obvious to use latent crimp fibers as part of the fibers of the elastic layer of Vander Wielen et al. in order to form a second layer well suited for use in an absorbent article because of the teachings of Zelazoski et al. (col. 6, lines 55-65). The instant claimed

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basis weight, density and permeability ranges are taken as being met by the combination as the absorbent article of the combination has the same uses as that taught by the instant specification and would therefore have similar ranges when optimized for this application absent unexpected results.

4. Claim 27 is objected to because of the following informalities: it is not clear how it differs from claim 18 in further limiting claim 7. Appropriate correction is required.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Akihiko (JP-A 09-003755).

See Figure 3 and the teachings cited in the above rejection.

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7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-3, 5-7, 10-13, 15, 17-24 and 27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 7, and 10 of copending Application No. 10/372,205. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the use of untangled and unbonded fibers in the gathered web of the '205 case would produce the filled projections of the instant claims. Though the '205 case is latter filed, only a one way showing of obviousness is needed as the use of thermal resin bonding was

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disclosed in the instant case and could have been claimed in the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Saka U.S. 2003/0162460 A1 is the published application of serial No. 10/372,205.

10. Applicant's argument's filed 17 November 2004 have been considered but are not considered to be persuasive.

Applicant argues that there is no teaching of a projection filled with fibers given in the art rejections. New grounds of rejection are given above that more clearly meet this limitation. Applicant's arguments regarding the motivation to combine have been addressed previously.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one

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business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



WW/ww

February 1, 2005

**WILLIAM P. WATKINS III
PRIMARY EXAMINER**